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OFFICE OF PETITIONS

In re Application of :
Paul Raymond Matteau et al :
Application No. 09/900,420 : ON PETITION
Filed: July 6, 2001 :
Attorney Docket No. 027906-0221 :

This is a decision on the petition filed June 19, 2002, to accept the preliminary amendment as having been present on filing of the above-identified application. The petition is properly treated as a petition under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **granted**.

The application was deposited on July 6, 2001. However, on March 14, 2002, a Non-Final Office Action was mailed, which alerted petitioner that the preliminary amendment was omitted from the application on filing.

In response, on June 19, 2002, the present petition was filed. Petitioner argues that the preliminary amendment was included with the application papers deposited on July 6, 2001. As evidence thereof, petitioner submitted a copy of his postcard receipt which acknowledges receipt of a preliminary amendment on July 6, 2001. A copy of the preliminary amendment was also submitted.

A review of the application file shows no evidence of a preliminary amendment being present among the application papers.

MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, since the evidence support the fact that a patent application-continuation; drawing; check (\$1238); declaration and power of attorney (copy); preliminary amendment; assignment (copy); and Form PTO No. 1449 (copy), were in fact present on filing.

It is noted that the copy of the preliminary amendment submitted June 19, 2002 reference prior Application No. 09/256,672.

Since the preliminary amendment cannot be located in the Office, the copy of the preliminary amendment supplied on June 19, 2002 will be used for processing and examination purposes.

This application is being returned to Technology Center Art Unit 3611 for appropriate consideration of the preliminary amendment.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-8859.

Karen Creasy

Karen Creasy
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